

To: Members of the Public Records Subcommittee
From: Bert Robinson, Chair
Re: Oct. 1 subcommittee meeting

9/25/2007

We have a full agenda for our Oct. 1 subcommittee meeting, so I thought I'd outline some options for our consideration in hopes of speeding us toward a decision.

- 1.) **Police records** – Given that we have a task force meeting on this subject just three days after the subcommittee meeting, we aren't in a position to modify our recommendation even if we wanted to. But there are some issues that came up both in the public hearing and in the memo from the police department that are worth discussing among ourselves, since I imagine they may arise again on Thursday, Oct. 4, as amendments to our proposal. Please, feel free to make suggestions, additions, subtractions.
 - a.) **Unsubstantiated allegations** – Bob Brownstein expressed some concern, as did others, about individuals whose names may arise in police reports in relation to unsubstantiated allegations. Because Bob mentioned this issue to several people in advance of the meeting, there has already been some effort made by the ACLU to devise language that might address this concern without interfering with the release of significant information in police reports. I can share this language if anyone is interested.
 - b.) **Narrowing the investigation exemption** – Because of a concern that the investigation exemption might be interpreted too broadly, we added the phrase “where prosecution is likely” in an effort to make clear that information should be withheld only if it would compromise a viable investigation. That phrase drew substantial objections at the public hearing. Would we be willing to drop the language, and if so would we seek to draft different language to accomplish our original intent? Is this a place where we might ask the police department for suggestions?
 - c.) **Closed investigations** – We've heard much testimony that closed investigations are often reopened and prosecuted successfully, and for that reason should not be open to public view. At least two possibilities may be worth considering here in addition to our original suggestion: We could simply drop the language about closed investigations from the ordinance, allowing material from unsuccessful investigations to become public only after the statute of limitations expires. Or we could ask the police department to work with us in devising a better definition of “closed” for the purposes of the ordinance.
 - d.) **Adult witnesses** – The police department suggested in its memo to the task force that it be allowed to withhold the names of all witnesses, not simply juvenile witnesses. We also heard testimony to this end. The language of our proposed ordinance already allows police to withhold the name of confidential informants and witnesses whose safety might be threatened by disclosure. Is that language sufficient, or should we be more explicit? If we are willing to consider it, do we believe it should be on an “opt out” basis, i.e. names of witnesses can be withheld

- only upon request of the witness? In lesser crimes, witnesses may not be concerned about being identified.
- e.) **Victims** – We heard much testimony about the need to protect crime victims. In fact, our proposed ordinance, as written, does not make public any more information about the identity of victims than is already required by state law. Do we want to make that fact clearer to the task force in our presentation? Or is there some other approach that could help with this sensitive issue?
- 2.) **Copying fees** – Tom tells me that he expects city staff to recommend to the council a uniform copying fee of 20 cents per page for every department (that’s what the planning department currently charges; the city clerk charges 25 cents and the police department 30 cents). Staff will provide a cost analysis justifying the 20 cent figure according to criteria set forth in the public records act; this material may be presented to us orally at our Oct. 1 meeting. Given that, it seems to me we have several options.
- a.) Propose the staff recommendation.
 - b.) Set a lower fee in the sunshine law. Both Milpitas and San Francisco do this, setting 10 cents as the standard, but allowing a higher charge if it can be cost justified.
 - c.) Split the middle, as per our original proposal. For instance, we might propose 10 cents for the first 100 pages, and 20 cents after. We had earlier proposed that the first 100 pages be free, but have heard concerns that this might promote unnecessary copying.
- 3.) **Deliberative process/balancing act** – Following on Virginia’s good suggestion from the last meeting, we might consider asking the city attorney’s office for some additional information to aid our decision. My sense is that we as a subcommittee are going to be reluctant to leave language as broad as the current “balancing act” in place. But I think there are specific issues for which the city now uses the balancing act that merit our consideration. For instance:
- a.) Protections for the identities of complaining parties in internal investigations (the Silva investigation example that Rick mentioned).
 - b.) Protections for the identities of private citizens who interact with the city.

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I think it might be worth asking the city attorney’s office if it can identify other specific interests that might deserve special protections if the sunshine law does not include broad “balancing act” language.